IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SOUTHERN POLYMER, INC.,	]	
	]	
Plaintiff,	]	
	]	
v.	]	CIVIL ACTION FILE NO.:
	]	1:16-CV-01061-TWT
MASTER EXTRUSION, LLC, and	]	
COLORMASTERS, LLC	]	
	]	
Defendants	]	

PLAINTIFF SOUTHERN POLYMER, INC.'S ANSWER TO THE COUNTERCLAIM

FIRST DEFENSE

The Counterclaim fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiffs in Counterclaim's damages, if any, are limited by the limitation of liability and damages provisions which were included in the Terms and Conditions of Sale between the Parties, and formed a part of the basis of the bargain between the Parties. These Terms and Conditions were also a part of the basis of the bargain as a result of course of dealing between the Parties for a period of time.

THIRD DEFENSE

The Counterclaim fails to state a claim for fraud in the inducement with sufficient particularity and specificity.

FOURTH DEFENSE

The Counterclaim fails to state a claim for fraud, deceit, suppression, oppression and misrepresentation.

FIFTH DEFENSE

The Counterclaim fails to state a claim for attorney's fees and expenses of litigation.

SIXTH DEFENSE

Defendants' claims in this Counterclaim are barred by the doctrines of waiver and/or estoppel.

SEVENTH DEFENSE

Southern Polymer asserts the defense of comparative negligence and alleges that the damages and injuries alleged in the Counterclaim were legally and proximately caused in whole or in part by the negligence, fault, negligence per se, assumption of the risk, misuse, and culpable conduct of Defendants who failed to exercise the same degree of care and caution, as well as common sense, as would have been exercised by persons and/or entities using ordinary care, caution, and common sense in the same or similar circumstances. Southern Polymer is therefore entitled to have the Court and jury apply the doctrines of comparative and/or contributory negligence to reduce any judgment against it by the degree of negligence or fault attributable to Defendants.

EIGHTH DEFENSE

The injuries alleged by Defendants' are or may be due to Defendants' own contributory and/or comparative negligence, thereby barring recovery from this Defendant in Counterclaim.

NINTH DEFENSE

Defendants' claim for damages in this Counterclaim are precluded by virtue of Defendants' lack of payment and breach of contract relating to prior transactions.

TENTH DEFENSE

Defendants' claims for damages in their Counterclaim should be offset based upon the undisputed sums owed to Southern Polymer for earlier shipments of product, which such sums Defendants' have steadfastly refused to honor without justification or explanation.

ELEVENTH DEFENSE

The Counterclaim fails to specifically allege and itemize special damages, and Defendants are therefore precluded from recovering same.

TWELFTH DEFENSE

Defendants' damages, if any, are or may have been caused by acts and/or omissions of third persons and/or entities and/or product components, ingredients and/or constituents which were latent in nature, and as to which Southern Polymer could not reasonably have foreseen any alleged harm.

THIRTEENTH DEFENSE

Defendants' claims for implied warranty of merchantability and fitness for particular purpose have been sufficiently and legally disclaimed.

FOURTEENTH DEFENSE

1.

Defendant in Counterclaim and Plaintiff Southern Polymer, Inc. (hereinafter, "Plaintiff", "Southern Polymer", or "Defendant in Counterclaim") can neither admit nor deny that for approximately three years it has been the sole supplier of "the plastic resin" used by Master Extrusion in the manufacture of film. Southern Polymer, is and has been for approximately three years, a supplier of some plastic resins to Master Extrusion. Defendant in Counterclaim denies the remaining allegations contained in paragraph 1 of the Counterclaim.

2.

Defendant in Counterclaim denies paragraph 2 of the Counterclaim as phrased, but admits that emails/text messages were exchanged and that such emails and text messages speak for themselves when considered in context of this transaction and the Parties historical course of dealing.

3.

Defendant in Counterclaim denies paragraph 3 of the Counterclaim as phrased, but admits that emails/text messages were exchanged and that such emails and text messages speak for themselves when considered in context of this transaction and the Parties historical course of dealing.

4.

Defendant in Counterclaim admits the allegations contained in paragraph 4 of the Counterclaim.

5.

Defendant in Counterclaim admits that on or about April 22, 2015, it caused to be shipped to Master Extrusion a railcar containing approximately 197,200 pounds of resin, often referred to as a wide-spec resin, which it innocently and mistakenly referred to as TR-130 resin.

6.

Defendant in Counterclaim can neither admit nor deny the allegations contained in paragraph 6 of the Counterclaim, and therefore said paragraph stands denied.

7.

Defendant in Counterclaim can neither admit nor deny the allegations contained in paragraph 7 of the Counterclaim, and therefore said paragraph stands denied.

8.

Defendant in Counterclaim can neither admit nor deny the allegations contained in paragraph 8 of the Counterclaim, and therefore said paragraph stands denied.

9.

Defendant in Counterclaim can neither admit nor deny the allegations contained in paragraph 9 of the Counterclaim, and therefore said paragraph stands denied.

10.

Defendant in Counterclaim can neither admit nor deny the allegations contained in paragraph 10 of the Counterclaim, and therefore said paragraph stands denied.

11.

Defendant in Counterclaim can neither admit nor deny the allegations contained in paragraph 11 of the Counterclaim, and therefore said paragraph stands denied.

12.

Defendant in Counterclaim denies the allegations contained in paragraph 12 of the Counterclaim, and moves for a more definite statement as to any references to these resins not being "interchangeable" and usage for "vastly different purposes and products."

13.

Any such relevant product data sheets at any relevant point in time speak for themselves, and do not require a response from Defendant in Counterclaim. To the extent a response is deemed required, Defendant in Counterclaim states that it can neither admit nor deny the allegations contained in paragraph 13 of the Counterclaim, and therefore said paragraph stands denied.

14.

Defendant in Counterclaim denies the allegations contained in paragraph 14 of the Counterclaim.

15.

Defendant in Counterclaim admits only that correspondence dated October 29, 2015 was forwarded and thereafter received, but denies any material difference and denies Defendants' embellished claim for money damages.

16.

Any such document or correspondence referenced in paragraph 16 of the Counterclaim speaks for itself, and therefore does not require a response. Plaintiffs in Counterclaim have correctly noted that liability would be limited and damages limited pursuant to language that Defendants had repeatedly seen, assented to, and which such terms were a material part of the basis of the bargain between the Parties. All remaining allegations in paragraph 16 are denied.

17.

Defendant in Counterclaim admits paragraph 17 of the Counterclaim.

18.

Defendant in Counterclaim admits only that it commenced a civil action, but denies that it "pre-emptively" did so. Defendant in Counterclaim denies the remaining allegations contained in paragraph 18 of the Counterclaim.

19.

Any such order referenced in paragraph 19 speaks for itself and thus does not require a response from Defendant in Counterclaim. To the extent a response is required, Defendant in Counterclaim denies the implied allegations in paragraph 19 of the Counterclaim to the extent said allegations are deemed relevant to and/or dispositive of this Counterclaim.

COUNT ONE
(BREACH OF CONTRACT)

20.

Defendant in Counterclaim re-alleges its responses to all previous paragraphs of the Counterclaim as if fully set forth herein.

21.

Defendant in Counterclaim denies the allegations contained in paragraph 21 as phrased. Southern Polymer agreed to sell a resin, often referred to as off-spec, or wide-spec as had been done numerous times over the past. *See* also response to ¶5 above.

22.

Defendant in Counterclaim denies the allegations contained in paragraph 22 of the Counterclaim.

23.

Defendant in Counterclaim denies the allegations contained in paragraph 23 of the Counterclaim.

COUNT TWO
(BREACH OF EXPRESS WARRANTIES)

24.

Defendant in Counterclaim re-alleges its responses to all previous paragraphs of the Counterclaim as if fully set forth herein.

25.

Defendant in Counterclaim denies the allegations contained in paragraph 25 of the Counterclaim.

26.

Defendant in Counterclaim denies the allegations contained in paragraph 26 of the Counterclaim.

27.

Defendant in Counterclaim denies the allegations contained in paragraph 27 of the Counterclaim.

28.

Defendant in Counterclaim denies the allegations contained in paragraph 28 of the Counterclaim.

29.

Defendant in Counterclaim denies the allegations contained in paragraph 29 of the Counterclaim.

COUNT THREE
(BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY)

30.

Defendant in Counterclaim re-alleges its responses to all previous paragraphs of the Counterclaim as if fully set forth herein.

31.

Defendant in Counterclaim admits the allegations contained in paragraph 31 of the Counterclaim as to resins generally, including wide-spec resins.

32.

This paragraph calls for a legal conclusion, and therefore no response is required, as Defendants should be held to their proof. For further response, and to the extent a response is required, Defendant in Counterclaim denies this paragraph as phrased.

33.

Defendant in Counterclaim denies the allegations contained in paragraph 33 of the Counterclaim.

34.

Defendant in Counterclaim denies the allegations contained in paragraph 34 of the Counterclaim.

COUNT FOUR
(BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE)

35.

Defendant in Counterclaim re-alleges its responses to all previous paragraphs of the Counterclaim as if fully set forth herein.

36.

Defendant in Counterclaim can neither admit nor deny the purpose(s) for which Master Extrusion would use this railcar, and therefore this paragraph stands denied.

37.

Defendant in Counterclaim denies the allegations contained in paragraph 37 of the Counterclaim.

38.

Defendant in Counterclaim denies the allegations contained in paragraph 38 of the Counterclaim.

39.

Defendant in Counterclaim denies the allegations contained in paragraph 39 of the Counterclaim.

COUNT FIVE
(NEGLIGENCE)

40.

Defendant in Counterclaim re-alleges its responses to all previous paragraphs of the Counterclaim as if fully set forth herein.

41.

This paragraph calls for a legal conclusion, and thus no response is required. To the extent a response is called-for, Defendant in Counterclaim admits only that persons and/or entities including Defendants and Southern Polymer owe certain obligations imposed by law under certain circumstances. Defendant in Counterclaim denies the allegations contained in paragraph 41 of the Counterclaim as phrased.

42.

Defendant in Counterclaim denies the allegations contained in paragraph 42 of the Counterclaim.

43.

Defendant in Counterclaim denies the allegations contained in paragraph 43 of the Counterclaim.

COUNT SIX
(FRAUD IN THE INDUCEMENT)

44.

Defendant in Counterclaim re-alleges its responses to all previous paragraphs of the Counterclaim as if fully set forth herein.

45.

Defendant in Counterclaim denies the allegations contained in paragraph 45 of the Counterclaim.

46.

Defendant in Counterclaim denies the allegations contained in paragraph 46 of the Counterclaim.

47.

Defendant in Counterclaim denies the allegations contained in paragraph 47 of the Counterclaim.

48.

Defendant in Counterclaim denies the allegations contained in paragraph 48 of the Counterclaim.

COUNT SEVEN
(FRAUD; DECEIT; SUPPRESSION; OPPRESSION; MISREPRESENTATION)

49.

Defendant in Counterclaim re-alleges its responses to all previous paragraphs of the Counterclaim as if fully set forth herein.

50.

Defendant in Counterclaim denies the allegations contained in paragraph 50 of the Counterclaim.

51.

Defendant in Counterclaim denies the allegations contained in paragraph 51 of the Counterclaim.

52.

Defendant in Counterclaim denies the allegations contained in paragraph 52 of the Counterclaim.

COUNT EIGHT
(ATTORNEYS' FEES AND EXPENSES OF LITIGATION)

53.

Defendant in Counterclaim re-alleges its responses to all previous paragraphs of the Counterclaim as if fully set forth herein.

54.

Defendant in Counterclaim denies the allegations contained in paragraph 54 of the Counterclaim.

55.

Defendant in Counterclaim denies the allegations contained in paragraph 55 of the Counterclaim.

56.

Any allegation not specifically responded to is herewith denied.

WHEREFORE, Defendant in Counterclaim respectfully requests that this Court:

1. Dismiss with prejudice the Counterclaim;
2. Deny all relief requested by Defendants;
3. Grant judgment in favor of Southern Polymer on said Counterclaim;
4. Award Defendant in Counterclaim damages in an amount to be shown at trial;
5. Award Southern Polymer expenses of litigation, including reasonable attorneys' fees;
6. Grant such other and further relief as the Court deems just and proper.

This 18th day of August, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2016 a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail and/or electronic mail. Parties may access this filing through the Court's electronic filing system.

/s/ Edward M. Newsom